

another defendant.” Nelson v. O’Neil, 402 U.S. at 634 (Brennan, J., dissenting). Nelson v. O’Neil instead permits states, in crafting evidentiary rules, to depart from the federal “rule that juries are presumed to follow their instructions” and Bruton v. United States’ exception to that rule. Richardson v. Marsh, 481 U.S. at 211. See Nelson v. O’Neil, 391 U.S. at 211. Consequently, “due process of law,” U.S. Const. amend. XIV § 1, does not incorporate that federal rule.

VI. THE COURT MAKES THE FOLLOWING DETERMINATIONS REGARDING STATEMENTS THAT THE DEFENDANTS HAVE NOT SPECIFICALLY IDENTIFIED AS OBJECTIONABLE.

The Court applies its evidentiary analysis to particular statements that the United States presented during the Court’s James hearing. In the following table, the Court designates statements by both declarant and transcript citation. That table also contains the Court’s conclusions.

Declarant(s)	Citation	The Court’s Conclusions
Baca	Nov. 27 Tr. at 147:8-16	Nontestimonial; rule 801(d)(2)(E) applies as against Counts 6-7 Defendants
Calbert and Baca	Nov. 27 Tr. at 149:17-21	Nontestimonial; rule 801(d)(2)(E) applies as against Counts 6-7 Defendants
Baca	Nov. 27 Tr. at 149:17-21	Nontestimonial; rule 801(d)(2)(E) applies as against Counts 6-7 Defendants
M. Rodriguez and T. Martinez	Nov. 27 Tr. at 150:11-20	Nontestimonial; rule 801(d)(2)(E) applies as against Counts 6-7 Defendants
T. Martinez	Nov. 27 Tr. at 150:11-20	Nontestimonial; rule 801(d)(2)(E) applies as against Counts 6-7 Defendants
Herrera	Nov. 27 Tr. at 151:1-13	Nontestimonial; rule 801(d)(2)(A) applies as against Herrera; the Court will give a limiting instruction as to Sanchez, Baca, and Perez
M. Rodriguez	Nov. 27 Tr. at 152:8-24	Nontestimonial
Sanchez	Nov. 27 Tr. at 153:6-10	Nontestimonial; rule 801(d)(2)(A) applies as against Sanchez; rule 803(3) applies generally
Gomez	Nov. 27 Tr. at 153:19-154:5	Nontestimonial; rule 801(d)(2)(E) applies as to Count 8 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez

Baca	Nov. 27 Tr. at 153:19-154:5	Nontestimonial; rule 801(d)(2)(E) applies as to Count 8 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
M. Rodriguez	Nov. 27 Tr. at 155:19-159:2	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
M. Rodriguez	Nov. 27 Tr. at 159:10-160:5	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
M. Rodriguez	Nov. 27 Tr. at 160:6-161:4	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Sanchez	Nov. 27 Tr. at 160:6-161:4	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Sanchez	Nov. 27 Tr. at 161:5-162:13	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
M. Rodriguez	Nov. 27 Tr. at 162:14-163:25	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Sanchez	Nov. 27 Tr. at 164:4-14	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Baca	Nov. 27 Tr. at 164:23-165:16	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Gomez	Nov. 27 Tr. at 164:23-165:16	Nontestimonial
Baca	Nov. 27 Tr. at 167:5-18	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
C. Garcia	Nov. 27 Tr. at 167:19-169:6	Nontestimonial; rule 801(d)(2)(E) applies as to Count 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 27 Tr. at 167:19-169:6	Nontestimonial; rule 801(d)(2)(E) applies as to Count 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Sanchez	Nov. 28 Tr. at 40:23-41:8	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
R. Martinez	Nov. 28 Tr. at 41:14-20	Nontestimonial
Sanchez	Nov. 28 Tr. at 42:1-14	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Herrera	Nov. 28 Tr. at 42:15-21	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Sanchez	Nov. 28 Tr. at 42:22-43:14	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Perez	Nov. 28 Tr. at 43:9-14	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants

T. Martinez	Nov. 28 Tr. at 43:15-44:15	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
M. Rodriguez	Nov. 28 Tr. at 43:15-44:15	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
M. Rodriguez	Nov. 28 Tr. at 45:5-8	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Montoya	Nov. 28 Tr. at 45:12-15	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Sanchez	Nov. 28 Tr. at 45:15-20	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
M. Rodriguez	Nov. 28 Tr. at 45:22-46:4	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Montoya	Nov. 28 Tr. at 46:5-6	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
M. Rodriguez	Nov. 28 Tr. at 46:6-9	Nontestimonial
Molina	Nov. 28 Tr. at 46:6-9	Nontestimonial; rule 804(b)(2) applies
M. Rodriguez	Nov. 28 Tr. at 46:10-15	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
Herrera	Nov. 28 Tr. at 46:10-15	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 6-7 Defendants
R.P. Martinez	Nov. 29 Tr. at 229:16-230:4	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
R.P. Martinez	Nov. Tr. at 230:6-19	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
R.P. Martinez	Nov. 29 Tr. at 230:22-232:14	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
R. Martinez	Nov. 29 Tr. at 232:15-233:7	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
R. Martinez	Nov. 29 Tr. at 233:7-24	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 233:25-234:19	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 234:19-25	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the court will give a limiting instruction as to Sanchez, Herrera, and Perez

Baca	Nov. 29 Tr. at 236:21-237:5	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 237:15-25	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
R. Martinez	Nov. 29 Tr. at 237:15-25	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 238:3-11	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Montoya	Nov. 29 Tr. at 238:3-11	Nontestimonial
Baca	Nov. 29 Tr. at 238:25-239:3	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 239:3-8	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 239:18-240:3	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 240:10-15	Nontestimonial; rule 801(d)(2)(E) applies as to Count 9 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 240:15-21	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 241:3-4	Nontestimonial; rule 801(d)(2)(E) applies as to Count 10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 241:19-21	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 242:11-25	Nontestimonial; rule 801(d)(2)(E) applies as to Count 9 Defendants; the Court will give a limiting instruction as to the other Defendants
Baca	Nov. 29 Tr. at 243:3-18	Nontestimonial; rule 801(d)(2)(E) applies as to Count 9 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 243:24-244:7	Nontestimonial; rule 801(d)(2)(E) applies as to Count 9 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez

Baca	Nov. 29 Tr. at 244:10-11	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 244:25-245:5	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 245:12-17	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 245:24-246:9	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 247:15-25	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 248:3-7	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 248:16-19	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 249:5-12	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 250:3-5	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 250:11-21	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
C. Garcia	Nov. 29 Tr. at 250:11-21	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 250:25-251:3	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
C. Garcia	Nov. 29 Tr. at 250:25-	Nontestimonial; rule 801(d)(2)(E) applies as to

	251:3	Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov.29 Tr. at 251:8-17	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 252:14-21	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 256:17-25	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 257:7-11	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 257:13-14	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 257:15-16	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 257:17-18	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 257:19-21	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Duran	Nov. 29 Tr. at 257:20-21	Nontestimonial
M. Rodriguez	Nov. 29 Tr. at 257:20-21	Nontestimonial; rule 803(3) applies
Baca	Nov. 29 Tr. at 257:21-22	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Baca	Nov. 29 Tr. at 257:25	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
M Rodriguez	Nov. 29 Tr. at 257:25	Nontestimonial
Baca	Nov. 29 Tr. at 258:12-20	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
Baca	Nov. 29 Tr. at 259:1-4	Nontestimonial; rule 801(d)(2)(A) applies as to Baca; rule 803(3) applies generally
C. Garcia	Nov. 29 Tr. at 261:7-13; <u>James</u> Hearing Exhibit 26 ²²	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and

²²The United States indicated at the November 29, 2017 hearing that it would highlight, via Acee's testimony, portions of James Hearing Exhibit 26, "a transcript from a body wire that

		Perez
Parker	Nov. 29 Tr. at 262:1-4	Nontestimonial; rule 801(d)(2)(E) applies as to Counts 9-10 Defendants; the Court will give a limiting instruction as to Sanchez, Herrera, and Perez
Montoya	Nov 29 Tr. at 262:8-263:4	Testimonial ²³

IT IS ORDERED that: (i) Defendant Santos Gonzales' Motion for Production of Alleged Co-Conspirator Statements, Pre-Trial Hearing on Their Admissibility Pursuant to Fed.R.Evid. 801(d)(2)(E), filed May 9, 2017 (Doc. 1141), is granted; (ii) Defendant Rudy Perez's Motion for Production of Alleged Co-Conspirator Statements and for Pre-Trial Hearing on Their Admissibility, filed August 21, 2017 (Doc. 1228), is granted; (iii) the Opposed Motion for Specification of Co-Conspirator Statements and a Pre-Trial Hearing on the Statements' Admissibility, filed October 6, 2017 (Doc. 1303), is granted in part and denied in part; (iv) Motion to Prevent the Admission of Statements of Non-Testifying Codefendants Implicating Defendant Billy Garcia and for an Order for the Government to Specify Such Statements Prior to Trial, filed October 10, 2017 (Doc. 1307), is granted in part and denied in part; (v) Motion for James Hearing and Determination of Co-Conspirator Statements Admissibility at a Pre-Trial Hearing, filed October 13, 2017 (Doc. 1317), is granted; (vi) Defendant Shauna Gutierrez' Opposed Motion for a James Hearing, filed October 13, 2017 (Doc. 1321), is granted; (vii) Motion in Limine to Exclude Statement of Cooperating Government Witnesses, filed

Mario wore when he went to Chris Garcia's house to pick up the firearm," Nov. 29 Tr. at 260:9-11 (Acee), but it added, "I'm actually moving in the entire conversation as part of the co-conspirator statements," Nov. 29 Tr. at 260:13-15 (Castellano).

²³When Montoya made this statement, he was acting as confidential human source, and he was wearing a wire. See Nov. 29 Tr. at 260:2-11 (Acee). Accordingly, his statement was not made in furtherance of the conspiracy -- because Montoya, as a confidential human source -- was actively working to thwart the conspiracy. That Montoya was wearing a wire indicates that Montoya would reasonably expect his recorded statements to be introduced as evidence at a trial, so those statements are testimonial.